ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	§	
Interconnection and Resale Obligations	§	CC Docket 94-54
Pertaining to	§	FCC 96-284
Commercial Mobile Radio Services	§	

COMMENTS OF
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

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SUMMARY

Southwestern Bell Mobile Systems, Inc. (hereafter "SBMS"), opposes the imposition of automatic roaming on all CMRS providers as proposed in the Third Notice of Proposed Rulemaking, Docket 94-54, Docket 96- 284, released August 15, 1996. (hereafter "NPRM"). The replacement of market driven negotiated automatic roaming agreements among competitors with a pervasive system of regulation is a dramatic divergence from the path of de-regulation and market-driven competition followed by the Commission in multiple decisions, and mandated by Congress in the Telecommunications Act of 1996. The breadth of the proposed regulation would by necessity involve the Commission in regulation of rates charged by CMRS providers, a result the Commission has steadfastly avoided.

The impetus for such a significant change of direction is not due to evidence of alarming anti-competitive conduct among cellular carriers that requires intervention. Rather it is in response to a vague and unrealized "potential" fear of some PCS carriers that they "may" not be successful in negotiating roaming agreements with existing cellular carriers, despite the obvious economic incentive for cellular carriers to seek this additional roaming revenue where it makes commercial and operational sense.

The cellular industry has over a decade of statistics and experience in automatic roaming which should serve as a barometer of future developments. Without regulatory imperative, the cellular industry has created a pervasive system of roaming built upon comprehensive arms-length negotiations with competing carriers who all recognize that seamless national service benefits their customers. Clearinghouse organizations were created to validate, track and disperse

information related to the billing of roaming calls and settlement between carriers, and technical advances were developed to permit customers to receive calls automatically while in a "foreign" system, as well as to take their chosen features with them while roaming. All of this occurred without the necessity of regulatory mandate, and should continue.

SBMS is probably representative of larger carriers in the industry in that it has entered into over 200 automatic roaming agreements with cellular carriers covering over 3000 cities in North America. In contrast, only three PCS providers have even approached SBMS to discuss roaming in the last year, and only one was ready to enter into a binding agreement, although SBMS expressed interest to each inquirer. The one PCS provider ready to enter into an agreement is already a roaming partner with SBMS for its cellular markets and SBMS executed an agreement to include that carrier's PCS licensees in the existing agreement once their PCS markets are operational.

The imposition of mandated automatic roaming should increase administrative cost and burden as well as raise issues regarding capacity and storage for systems and databases utilized to administer and provide roaming services. The pending number portability docket may well be implicated by this decision, as discussed more fully herein.

Finally, cellular carriers have an inherent competitive disadvantage *ab initio* because of the comparatively small size of MSAs/RSAs compared to the MTAs granted to PCS providers. The negotiation of alliances with geographically proximate carriers, and the clustering of acquired markets to give customers the widest possible calling scopes clearly serves the public interest. The complaint of a small segment of carriers to the granting of "preferential" rates to affiliates or to proximate carriers cannot overcome this pro-competitive result, and plunges the

Commission headlong into rate regulation and perhaps even into mandating how a carrier manages and operates its business. This cannot be the desired result.

The Commission must continue to permit the forces of a vigorous competitive market to determine relationships among competing carriers, rather than reversing direction and imposing a pervasive system of unneeded and shortsighted regulation.

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Southwestern Bell Mobile Systems, Inc. ("SBMS")[1] by its attorneys and on behalf of itself and those entities in which it is general partner of a partnership that provides cellular service, files these comments in response to the Commission's Notice of Proposed Rulemaking released on August 15, 1996.

INTRODUCTION

A. The Imposition of Automatic Roaming Is Unwarranted and Would Supplant Vigorous Market-driven Competition with Unnecessary and Intrusive Regulation.

1. The record of the wireless industry for more than a decade is the best evidence that CMRS providers will enter into commercially reasonable automatic roaming agreements without the substitution of regulatory mandate for the competitive forces of the market.

[1]SBMS is one of the largest providers of CMRS in the United States (also operating under the name Cellular One), with operation in 67 cellular markets covering over 54 million potential customers ("Pops"), including 5 of the top 15 markets (Chicago, Boston, Washington D.C., Dallas/Ft. Worth, St. Louis).

Since the inception of wireless service over a decade ago, CMRS providers have known that the essence of wireless convenience is mobility. In order for the concept of "mobile" service to succeed, the customer must be able to place and receive calls while traveling within and outside their home market.

Therefore, without any imperative from the Commission to do so, CMRS providers negotiated automatic roaming agreements so that their respective customers could make and receive calls while in the "foreign" market of the other provider and without having to utilize credit cards for billing purposes. Various "clearinghouse" arrangements were created to sort and direct billing between carriers, again without the intervention of regulation. (See attached Affidavit of Lisa Guarnacci, labeled as Attachment A.)[2] Cellular companies use the industry standard of CIBER format to exchange information through the clearinghouse. PCS providers using GSM technology will not be able to exchange information using CIBER, creating a necessity for conversion, which would increase costs. (Id.)

Thus, competitors negotiated agreements, established a method of exchanging information for billing and settlement purposes, established methods of fraud control, and worked together for technical solutions to make automatic roaming even easier and to enable customers to use their features while roaming. None of this occurred because of Commission mandate. Indeed the Commission mandated only manual roaming.[3] These advances were made because the marketplace demanded it.

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[2]Lisa Guarnacci is the Director of Intercarrier Services for SBMS and, as such, is responsible for SBMS' roaming agreements.

[3]47 USC 22.901.

There is no evidence to suggest the same demands will not make it imperative for these negotiated agreements to be extended to PCS providers. Therefore any action by the Commission to mandate automatic roaming is at best premature and at worst, it will displace the existing rigorous market driven imperatives with short sighted and needlessly intrusive regulation.

The existing market-driven system of commercial negotiation and agreement permits the carriers broad discretion in determining what terms and conditions, including wholesale exchange rates, are reasonable in a particular market. This flexibility is critical, since the needs of one market may differ dramatically from those of another. Roaming patterns, geography, system sophistication, and number of anticipated roamers are among the many factors that influence these agreements. CMRS providers are incented to shop each other to determine which carrier can offer the best overall roaming alternative to an interested carrier. Surely the Commission does not intend to undertake pervasive regulation that addresses specific market economics pertaining to individual roaming agreements.

Whether this market-driven interaction works is not a matter of speculation. As a large provider of CMRS service, SBMS' experience is not unique. SBMS has entered into over 200 automatic roaming agreements, covering over 3000 cities in North America.[4] These agreements have been negotiated because they make economic sense, not because of a regulatory mandate.

No PCS provider can say it has been denied a roaming agreement with SBMS. In fact, while SBMS has had a few inquires from PCS providers, during each such contact, SBMS

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[4]Affidavit of Lisa Guarnacci.

agreed to the concept of roaming with each PCS provider. However, only one of the providers was ready to discuss the terms of such an agreement. SBMS' history with PCS providers that have expressed an interest in roaming can be easily summarized: one such preliminary contact[5] was a general discussion of roaming which the PCS provider did not pursue, even though SBMS was not opposed to further discussions. (Affidavit of Lisa Guarnacci) Another PCS provider was a current cellular roaming partner who contracted to supplant the definition of "cellular service" with "wireless service" so their PCS licensees could be included in the existing umbrella agreement when the PCS markets become operational (SBMS executed this amended language on June 30, 1996).[6] The third PCS provider said it was not ready to enter into an agreement. SBMS advised the carrier it would be willing to discuss a roaming agreement, depending upon the terms of the contract. (Id.) These discussions represent all requests by PCS providers to SBMS' Intercarrier Service department regarding automatic roaming.

Ironically, the Commission notes that when APC went on-line with its PCS service in the Washington D.C. area, its " . . . largest cellular competitor concentrated its advertising campaign on the unavailability of roaming to APC's customers." (Order, paragraph 10). Presumably, the Commission was referring to Bell Atlantic. SBMS, under the name "Cellular One" is the A-band cellular carrier in that market. Significant to this NPRM is the fact APC never contacted SBMS' Intercarrier Services department that administers roaming agreements to discuss the possibility of

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[5]For purposes of customer privacy, SBMS does not feel it can reveal the names of these PCS providers without their consent.

[6]This is an example of the "piggyback" effect the Commission solicits comment on in NPRM paragraph 21.

a roaming agreement.[7] Nor did APC approach SBMS for roaming in the geographically proximate markets of Boston, New York, or Chicago. (Id.) How, then, can PCS providers cry foul before they have even attempted to secure negotiated roaming agreements?

The NPRM at issue herein proposes a remarkable and unwarranted detour from the Commission's longstanding policy of engendering vigorous competition among CMRS providers without the intrusion of unnecessary regulation. The Commission acknowledges this will be the result when it states, "First, imposing such a requirement is inconsistent with our general policy of allowing market forces rather than regulation to shape the development of wireless services," (NPRM, paragraph 27). The Commission then asks whether the "potential" for discrimination [not *actual* discrimination, but *potential* discrimination] warrants a departure from this de-regulatory approach. (Id.) The answer is "no."

The Commission has ensured competition by licensing as many as six wireless carriers in a single market area. With this environment established, there is no reasonable basis to shackle the competitive market with an overlay of unnecessary regulation. As the Commission admits, " . . . [T]here is no specific evidence in the record of unreasonable discrimination against PCS licensees concerning the provision of roaming." (NPRM paragraph 20) The Commission can justify the imposition of a far reaching regulatory scheme where none has existed before only where there is an existent, pervasive and extraordinary pattern of discrimination, not some speculative and largely fictional "potential."

In contrast to the wireless environment, the imposition of regulation when no true

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[7]Affidavit of Lisa Guarnacci.

competition exists has been common in the world of telephony. This pervasive oversight role by a regulator protected not only consumers, but also protected the legal monopolist from charges of anti-competitive conduct by reason of state-imposed regulation that results in state action immunity.[8] Such regulation must be rigorous and pervasive, for it displaced the forces of a competitive market that would otherwise exist. With the passage of the Telecommunications Act of 1996[9] and other de-regulatory landmarks, even that historic regulatory scheme has become unnecessary and contrary to the public interest.

However, by imposing automatic roaming, the Commission would reverse the natural order of a competitive market by removing the ability of CMRS providers to negotiate commercially reasonable roaming rates and terms and conditions tailored to the needs of their markets. Instead, there would be additional, unneeded regulation that will not only displace negotiations among providers, but may well mandate a single rate, regardless of the vagaries of the various marketplaces in which CMRS service is provided. How else is "nondiscriminatory rates, terms and conditions" defined? To offer a different rate or term would necessitate that the carrier make careful judgments about who is "similarly situated" and who is not, in order to justify what would otherwise be a "discrimination." Such a determination is inherently risky. Every carrier will claim to be "similarly situated" with the carrier who achieves the lowest rates. The ultimate result may be, at best, a small set of benchmarked rates depending on such readily discernable factors as number of markets included in the agreement.

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[8]See Parker v. Brown, 317 U.S. 341 (1943).

[9]Telecommunications Act of 1996, 104th Congress 2nd Session, March 1996; 47 USC 151 et seq.

This initial foray into rate regulation of CMRS providers by the Commission becomes even more complex when the Commission discusses whether more favorable rates can be offered to affiliates or "geographically proximate" carriers. (NPRM, paragraph 23) The Commission notes, "We do not propose to regulate the prices that carriers charge resellers (or anyone else) for roaming, other than perhaps to prohibit discrimination in the prices charged to similarly situated carriers." (NPRM paragraph 24). However, this result is unavoidable when the Commission begins to bench mark wholesale exchange rates among competing providers.

This imposition will mark the Commission's entry into rate regulation among CMRS providers, which is a giant step backward from the deregulation imposed by Congress in the Telecommunications Act of 1996 and the Omnibus Reconciliation Act of 1993. The Commission acknowledges this concern when it states, "Similarly, it could be viewed as at odds with Congress' goal in adopting the Telecommunications Act of 1996 of creating 'a pro-competitive, de-regulatory national policy framework' for the United States telecommunications industry." (NPRM paragraph 27) SBMS submits it *is* at odds with this deregulation. The competing interests cannot be reconciled.

To justify such a dramatic departure from Congressional intent and from the Commission's own longstanding policies, the Commission must be faced with an alarming record of anti-competitive behavior on the part of CMRS providers concerning the refusal to enter into roaming agreements. It has not been. Instead, the Commission admits, "The inconclusiveness of the original record does not present a basis for us to adopt automatic roaming rules." (NPRM, paragraph 16) The Commission goes on to state, "In general, the record raises the question whether, during the broadband PCS build out period, market conditions *may* create

economic incentives for certain CMRS carriers to discriminate unreasonably in the provision of roaming, or to otherwise engage in unjust or unreasonable practices with regard to roaming." (Id., emphasis added)

Respectfully, that question is purely speculative and in no way justifies the implementation of a significant overlay of regulation. This is particularly true when there is over a decade of experience by which to gauge the progression of automatic roaming without regulatory interference. Commissioner Chong is correct to be concerned when she states in her separate comments, " . . . I have some concerns that the imposition of automatic roaming requirements might inadvertently hinder competition in the CMRS marketplace." (Separate Statement of Commissioner Rachelle B. Chong, page 3).

In paragraph 16 of the NPRM the Commission solicits "up-to-date information on events of the past year concerning automatic roaming issues." SBMS submits that information can be summarized again: Over the last year, SBMS has been approached by only three PCS carriers, only one of whom was ready to put in place an agreement that would apply to its PCS markets when they become operational. As for roaming advancements with competing *cellular* carriers, in the last two years, SBMS has made many advances. Most notably, SBMS has, by negotiation, eliminated "daily"[10] charges in over ninety per cent of the markets in which it has an automatic roaming agreement. This is the sort of proactive, market demanded and public interest result that can be achieved in a competitive market.

When (or if) PCS providers approach SBMS seriously ready to enter into an automatic

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[10]A "daily" charge is the per day charge assessed to customers when they roam by the market in which they are roaming.

roaming agreement, so long as roaming is technically feasible and there is value to SBMS' customers, market forces as well as common sense dictate SBMS would find this additional source of revenue attractive. The Commission is in fear of a phantom that doesn't exist. Mere allegations or expressions of concern by competitors does not present a legitimate case for sweeping regulatory change when the record is replete with a long history of successfully negotiated automatic roaming agreements.

While Omnipoint and AirTouch strongly advocate this regulatory mandate, neither of these carriers has approached SBMS for automatic roaming agreements in any market, including five of the top markets in the country. This is perhaps the best evidence that they prefer the speculative concern over hard experience. That preference must be because their straw man will cease to exist when negotiated agreements are concluded.

2. Mandating automatic roaming agreements would have a chilling effect on competition.

The proposed mandate would also chill other aspects of competition. For instance, what would be the incentive for a CMRS provider shopping competing carriers for the best reciprocal rates? If a carrier approaches SBMS for a roaming agreement, SBMS is free to use the inducement of a lower wholesale exchange rate in return for a reciprocal wholesale exchange rate in markets where the soliciting carrier operates. Not so with mandated, universal rates.

Cellular technology has undergone tremendous advancement since its inception. The ability to initiate and implement network advances have permitted, *inter alia,* the implementation of interconnection to a backbone via IS-41 standards. Such capabilities permit a roamer's calls to be automatically delivered in a foreign market, and to have the customer's

chosen features follow him from market to market. The industry has evolved and innovated without imposition of regulation. This NPRM suggests a potential chill on that innovation. While the Commission recognizes a carrier should be able to make changes in its technology for "legitimate business reasons", (NPRM paragraph 26), it goes on to state, "a carrier should not introduce features into its system in order to obstruct service to roamers from systems using otherwise compatible systems." (Id.) This concern is already met by the Commission's imposition of manual roaming requirements upon all CMRS providers. (Order, paragraph 13). Given this mandate, CMRS providers are already precluded from completely obstructing roaming.

While that statement seems innocuous, it could easily be used in an anti-competitive way if a competing carrier chooses to delay "deployment" of a network alteration, by claiming it could "obstruct" roaming if implemented by the facilities-based carrier, even though the impact on "roaming" may be temporary or inconsequential compared to the network advances. Such a limitation must clearly place the burden on the complaining party to show that the change was put in place *only* to obstruct roaming. Nothing should require a carrier to "pre-announce" its network advancements to its competitors, so they can evaluate the impact on roaming, as network advancements are a keystone of competition in the wireless arena.

The Commission expresses concern that imposing automatic roaming could effect the value of existing cellular "footprints." (NPRM, paragraph 20). Carriers compete in part on the strength of their seamless national reach that is crafted upon intense negotiations resulting in mutually agreeable roaming agreements. Certainly an enforced obligation to "agree" removes the impetus to ensure the best terms for roamers on a national basis and erodes the value of

existing agreements.

This concern is repeated in NPRM, Paragraph 28 where the Commission states "If we adopt an automatic roaming non-discrimination requirement, will carriers still be able to differentiate their services?" The answer to that question is a question. On what basis will a carrier be able to differentiate its footprint? Only if the carrier "buys down" the rate or "marks up" the rate will they vary from the ubiquitous wireless provider. This will inevitably lessen competition as carriers are no longer incented to negotiate. What is proposed is roaming through regulation, not negotiation, which will not foster innovation and advancement. In fact, some carriers will be incented to charge higher roaming rates for revenue purposes and let the "home" carrier either "buy down" the rate to satisfy its customers, or endure customer dissatisfaction over high roaming fees and rates. Negative customer reaction hurts the "home" carrier, not the carrier charging high roaming rates. Both results are bad public policy.

B. The Imposition of Automatic Roaming Would Impose Unnecessary and Burdensome Cost and Capacity Issues.

The Commission acknowledges that "... the imposition of an automatic roaming agreement could be costly and burdensome." (NPRM paragraph 29). In particular, the Commission asks whether carriers can absorb those costs, or will they be recovered from customers? Ultimately, it is likely the customers will bear that increased cost. Where a carrier has to accommodate every other carrier, and where there is a generally set rate of recovery for those increased costs, there is always a break-point beyond which the customer, rather than the carrier, absorbs the cost.

The Commission should not require automatic roaming without considering the effect it will have on the cost and implementation of number portability. The imposition of mandatory automatic roaming has a detrimental impact on the cost and time lines associated with implementing CMRS number portability. The Commission has stated that CMRS providers must be able to provide and support number portability so that a customer can change wireless service providers or change technology (i.e., wireline vs. wireless) without changing the phone number ("service provider number portability").[11] All cellular, broadband PCS and covered SMR carriers are required to offer such portability "throughout their networks, including the ability to support roaming, by June 30, 1999."[12] In setting the implementation date the Commission stated that it was allowing wireless additional time to comply, in part, because of the "technical burdens unique to the provision of seamless roaming on cellular, broadband PCS, and covered SMR networks."[13] The technical burdens that number portability causes for roaming are explained in detail in pleadings filed in both the Number Portability Docket and in this Docket.[14] A primary concern is the fact that automatic roaming relies on the dialing party's NPA/NXX to determine how to route the verification request. A carrier will load its roaming

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[11]In the Matter of Telephone Number Portability, CC Docket 95-116, First Report and Order and Further Notice of Proposed Rulemaking, paragraphs 162-170, 172 (Released July 2, 1996). ("Number Portability Order").

[12]Number Portability Order, paragraph 166.

[13]Id.

[14]See, e.g., SBC Comments, CC Docket 95-116, filed September 12, 1995, pp. 6, 15, Appendix F; See Also, Comments of Southwestern Bell Corporation, CC Docket 94-54, RM 8012, filed September 12, 1994.

partners' NPA/NXX combinations in its switch and then use the NPA/NXX portion of the MIN[15] to know where to route the verification request. Number portability thus has a substantial impact on current automatic roaming standards. Realizing the impact number portability will have on the wireless industry, including the impact on roaming, the Commission delegated limited authority to the Chief of the Wireless Bureau to waive or stay the implementation date of wireless service provider portability for a period not to exceed 9 months.[16] Having to provide service provider portability under a scenario of mandated automatic roaming changes the task and costs facing the industry and thus would likely require a revisiting of the time lines.

In addition, the loss of the ability to provide manual roaming will greatly increase the cost and task of implementing wireless service provider portability. With manual roaming a carrier is not required to route a verification request to the other carrier and thus is not required to rely on the NPA/NXX or the MIN for routing information. Service provider number portability increases the cost of automatic roaming because carriers will no longer be able to totally rely on the NPA/NXX of the telephone number for routing the verification request. The costs associated with number portability will be significant enough without adding the cost associated with having to provide mandatory automatic roaming, especially when such costs are, at best, only to provide a "short term fix" until PCS is built out.[17]

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[15]"Mobile Identification Number"

[16]See, Number Portability Order, paragraph 167.

[17]See, Second Report and Order and Third Notice of Proposed Rulemaking, paragraph 32. The Commission states that any roaming regulations are likely to become "superfluous" as the PCS providers build out their systems. The Commission thus anticipates that any action (continued...)

Carriers should be allowed to continue to enter into mutually agreeable automatic roaming arrangements where they feel it makes business sense. Imposing the costs associated with automatic roaming especially in a service provider, number portability scenario, could in fact impede competition and the public's options. For example, Carrier A may decide that the most efficient and economical means of offering service to customers wanting to port numbers to its service is to restrict such customers to manual roaming. Carrier A's decision might be influenced by a belief that customers would rather pay a lower cost for service than what might be charged if Carrier A incurred the costs associated with offering automatic roaming to ported customers through its various roaming partners. Carrier A would thus be gambling on whether the anticipated lower rate is worth more than the customers desire to keep the existing number and receive automatic roaming. Carrier A's competition may gamble differently and decide to offer automatic roaming to ported customers at a slightly increased price. The various demographics of the specific market including the propensity of the customers to roam and the desire to keep the existing wireless number will impact the success of either strategy. The ability of carriers to take such risks benefits the public by increasing the variety of offerings. The ability to offer manual roaming as an option should not be withheld from the carriers, especially in light of the effect service provider number portability will have on automatic roaming.

Other costs associated with mandated automatic roaming would include the administrative burden of administering as many as seven times the agreements presently

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[17](...continued)
taken would sunset after five years. SBMS does not believe that any action is required other than providing for regulatory symmetry between the cellular and PCS requirements.

administered. If the roaming partner does not participate in a industry settlement, then the carrier has the additional burden of manually accomplishing settlements. Finally, there is the increased cost and capacity issues of storing the NPA/NXX of every carrier with whom the CMRS provider roams.

C. By Imposing Automatic Roaming, Not Only Is The Commission Responding to a Competitive Issue that is Purely Speculative, But Is Also Needlessly Exacerbating An Existing Competitive Preference in Favor of PCS Providers.

When the Commission established the PCS MTAs,[18] the area covered by a single MTA often encompasses several MSAs/RSAs.[19] Because calling scope has always been a critical component of competition in the wireless industry, this disparity can be overcome by the cellular carriers by entering into advantageous alliances, or by acquisition of neighboring markets. Through this NPRM, the Commission is being misled by PCS providers who hope to retain their competitive advantage while cloaking that retention in a plea to prevent more favorable treatment to adjacent carriers or affiliates. Roaming agreements with adjacent carriers or affiliates are often necessary to establish a reasonably priced calling scope for customers which merely mimics the calling scope of a single PCS MTA license.

The Commission acknowledges this disparity when it states, "The relatively limited geographic scope of cellular service areas prompted cellular carriers to compete for customers based on the extent of their roaming networks and their roaming rates and features. In contrast,

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[18]"MTA" is "Major Trading Area."

[19]"MSA" is "Metropolitan Statistical Area;" "RSA" is "Rural Service Area."

broadband PCS customers can go much further distance without roaming." (NPRM, paragraph 19) The Commission correctly wonders whether the ability and scope of roaming is as important to PCS carriers, given the breadth of their markets. The logical conclusion is where one PCS carrier provides service in an MTA what would equate to six cellular markets, the PCS provider has saved itself from having to enter into and administer five roaming agreements because, as the Commission notes, most roaming is in adjacent markets. (NPRM, paragraph 19)

Based upon an *allegation* by Comcast that major carriers discriminate in favor of affiliates to the disadvantage of smaller carriers with less affiliates, the Commission seeks comment on whether a carrier should be able to offer a more favorable rate to either an affiliate or to a geographically proximate carrier. (NPRM, paragraph 23) Accepting this premise plunges the Commission full force into the realm of rate regulation, and also dilutes the effect of negotiated alliances between geographically proximate carriers. Many carriers, such as SBMS, have invested multiple millions of dollars in purchasing markets that have a strategic and "clustered" effect. This enables customers to have wider calling scopes and will assist the cellular carrier in competing with the larger MTAs. To regulate how affiliated markets will exchange rates is not only rate regulation, but also burdens cellular carriers with a disadvantage that did not exist when the acquisition of markets was made. In contrast, PCS providers were well aware of the "ground rules" when they purchased their PCS licenses. Mandated automatic roaming was never one of those "rules."

Further, what constitutes an affiliate for determination of this rate? Imposing artificial rate structures where "home" rates currently exist, will certainly not benefit the public interest. For instance, in Central Illinois, SBMS owns and operates, via separate corporate interests, seven

separate MSAs and RSAs that are geographically proximate. Customers of any one of these entities can travel amongst and between these markets as if traveling within a single "home" market utilizing a single network. Even with these properties operated as a unified entity, and when combined with SBMS' Chicago MSA, the total area does not equal the size of the Chicago PCS MTA. Does the Commission intend to erode that consumer friendly and pro-competitive result in honor of some vague complaint by a small segment of the industry? How deeply does the Commission truly intend to affect or regulate a carrier's structure and determine whether a company can organize its markets in a given way? By regulating this issue, the Commission will enter this morass.

Similarly, the rates negotiated with "unaffiliated" proximate carriers has also served the public interest. In some cases, carriers are able to negotiate rates reasonable enough that the carrier may choose to "buy down" the exchange rate and permit its customers to roam in a proximate market as if calling from their home market. This, too, is a consumer friendly and pro-competitive result.

Finally, the Commission wonders whether requiring automatic roaming between facilities based carriers in a single market is a good result. There are instances when such agreements make commercial and competitive sense, and SBMS has entered into these arrangements. Having the flexibility to do so or to *refuse* to do so when it doesn't make sense, is the key to market driven commercial negotiations. Mandating this, however, invites a carrier to under develop its own area and requires the roaming partner for build out and innovation. This result cannot be in the public interest. Rather, the public interest is served when facilities-based carriers agree at arm's length to roaming agreements with beneficial

terms and conditions that serve the needs of their customers in a competitive marketplace.

The Commission wonders how it could administer a rule that does not require what it calls "in-region" roaming, " . . . given the different geographic scope of cellular, broadband PCS and covered SMR licenses and operations." The fact that administering such a rule is so unwieldy, if not impossible, is yet another indicator of the pervasive reach of regulation the Commission is considering in this NPRM.

Likewise, the Commission searches for comment on permitting resellers to negotiate roaming agreements. (NPRM, paragraph 21). First, resellers already benefit by "riding" the roaming agreements entered into by the carriers they resell. The reseller has no separate System Identification Number ("SID") which is the method used by the clearinghouses in segregating traffic. There is no SID because there is no "system." The reseller, by definition, is selling someone else's system. Therefore, an overhaul of the industry-wide tracking system would be required. To identify a reseller, the carrier and the clearinghouse would have to take the caller to the MIN, which would create administrative cost and capacity burdens. If new SIDs are created, the whole issue of number exhaustion is intensified by these new entrants.

Creating and mandating a reseller class of roaming partners for facilities-based carriers to accommodate and track is a meaningless imposition of cost and administrative burden, especially since the resellers are already benefitting from negotiated roaming agreements. The resellers would also be faced with negotiating its own settlement agreements.

Finally, the Commission seeks comment on whether mandated automatic roaming could increase fraud exposure. The answer is yes. As the Commission is well aware, wireless fraud is a tremendous concern and cost to the wireless industry. Each year, billions of dollars are

lost due to illegal wireless phone calls. One of the common methods for fraud involves criminals taking valid wireless phone numbers to another market and making countless automatic roaming calls. When this occurs, the wireless companies have pulled the exchanges containing those numbers from the valid roaming lists in the markets where the fraud is occurring. This then shuts down the roaming fraud and protects customers as well as companies. SBMS could be severely impacted, and for small wireless companies, this can mean the difference between survival and bankruptcy. Although companies can pull individual numbers from roaming lists, that is a costly and burdensome method which is not practical for the large numbers of criminals roaming fraudulently in certain markets. If automatic roaming were mandated, one of the industry's most efficient and valuable tools to combat fraud could be comprised.

CONCLUSION

The wireless market is a highly competitive environment, with active, market-driven enhancements and innovations. Because of the need to enable customers to use their wireless technology, both at home and while traveling outside their home market, cellular carriers have entered into automatic roaming agreements to provide seamless, nationwide coverage. The industry has also developed network innovations to assist callers in having their features follow them while roaming and having their calls delivered in a roaming market. The industry has also developed a method for exchanging and tracking billing information related to roamers. All of this occurred without regulatory intervention. The vague and unsubstantiated fears of a few PCS providers, who have made little effort to negotiate roaming agreements, does not warrant an overhaul of this market driven system by complete displacement with intrusive regulation. Automatic roaming between CMRS providers need not be, and should not be, imposed by this Commission.

Respectfully submitted,

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